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| TO:                                 | FROM:                               |
| Examiner Ali, Syed J.               | Benjamin S. Withrow                 |
| COMPANY:                            | DATE:                               |
| USPTO - Art Unit 2195               | 10/14/2005                          |
| FAX NUMBER:                         | TOTAL NO. OF PAGES INCLUDING COVER: |
| 571-273-8300                        | 7                                   |
| PHONE NUMBER:                       | SENDER'S REFERENCE NUMBER:          |
|                                     | 7000-429                            |
| RE:                                 | YOUR REFERENCE NUMBER:              |
| Pre-Appeal Brief Request for Review | 09/739,714                          |

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☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ ORIGINAL TO FOLLOW

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## NOTES/COMMENTS:

Please find attached the following item(s):

- 1) Pre-Appeal Brief Request for Review (3 pages)
- 2) Pre-Appeal Brief Request for Review Form (1 page)
- 3) Notice of Appeal Form (1 page)
- 4) Credit card form (1 page)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Mohamed S. El-Hennawey et al.

Examiner: Ali, Syed J.

Serial No. 09/739,714

Art Unit: 2195

Filed: 12/20/2000

For: INSTANCE MEMORY HANDOFF IN MULTI-PROCESSOR SYSTEM

Mail Stop AF  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

The current remarks provide the succinct and focused set of arguments for which the review is being requested and accompany the concurrently filed Notice of Appeal. Applicant requires a one month extension of time to file the current Notice of Appeal and requests that this be considered a petition therefor. Applicant has enclosed a Credit Card Form authorizing payment of \$620.00 to cover the cost of the Notice of Appeal and the one month extension of time. If any additional fees are required in association with this response, the Director is hereby authorized to charge them to Deposit Account 50-1732, and consider this a petition therefor.

10/17/2005 MBINAS 00000041 09739714

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### REMARKS

Applicant files the Request for a Pre-Appeal Brief Review of the application so that the panel of Examiners may determine whether the Office Actions of record adequately establish anticipation and obviousness for the claims.

#### **A. The Patent Office Has Not Established Anticipation**

Claim 1 requires "moving processing of said given channel to a different one of said plurality of processors. . . ." The Patent Office, in the Advisory Action agrees that Hsu does not teach a single call being handled by multiple processors without an intervening call set up request, but asserts that the claim language does not reach this far. Applicant disagrees, as explained in the Response filed September 8, 2005, page 3, lines 11-16, the claim language and the specification contradict the Patent Office's position. To this extent, Hsu does not anticipate claim 1 or the claims which depend from claim 1.

As further argued in the Response filed September 8, 2005, page 3, line 27-page 4, line 4, claims 9 and 10 are likewise not anticipated.

#### **B. The Patent Office Has Not Supported the Motivation to Combine the References**

As Applicant argued in the Response filed September 8, 2005, page 4, lines 6-19, the Patent Office is obligated to provide actual evidence to support motivations to combine references. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). *Dembiczak* explicitly requires that there must be evidence to support the suggestion to combine references. In the absence of actual evidence, the Federal Circuit fears that impermissible hindsight reconstruction might have been used to assemble the combination. To date, the Patent Office has not provided any evidence to support the combination of claims 2 and 3. Rather, the Patent Office argues that jitter buffers and history buffers are known. Whether such buffers are known or not begs the question whether there is evidence in the record that suggests combining known elements into the claimed invention. Merely because an element is known does not mean that there is a suggestion to combine references. MPEP § 2143.01. Since the Patent Office has not provided the requisite evidence, the combinations are improper. Since the combinations are improper, the rejections of claims 2 and 3 are improper. Since the rejections are improper, the claims are allowable.


Applicant requests that the panel of Examiners review the arguments previously presented and determine whether the Patent Office has established anticipation and a proper

motivation to combine the references. If the panel determines that these requirements have not been met, Applicant requests withdrawal of the rejections and claim allowance.

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:

  
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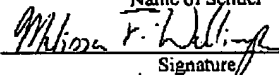
Date: October 14, 2005  
Attorney Docket: 7000-429

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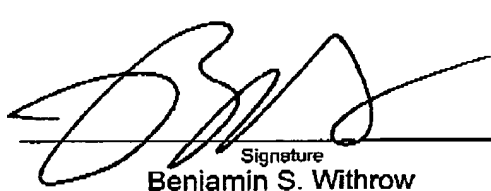
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PTO/SB/33 (07-05)

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| PRE-APPEAL BRIEF REQUEST FOR REVIEW  |  | Docket Number (Optional)   |                          |
|--|--|--|--------------------------|
|  |  | 7000-429   |                          |
| I hereby certify that this correspondence is being transmitted via facsimile on the date indicated below to:<br>Examiner: Ali, Syed J.<br>Art Unit: 2195<br>Fax Number: 571-273-8300<br>on <u>10/14/05</u><br>Signature: <u>Melissa F. Wellington</u><br>Typed or printed name: <u>Melissa F. Wellington</u> |  | Application Number<br>09/739,714   | Filed<br>12/20/2000      |
|  |  | First Named Inventor<br>Mohamed S. El-Hennawey                                       |                          |
|  |  | Art Unit<br>2195   | Examiner<br>Ali, Syed J. |
| Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.   |  |  |                          |
| This request is being filed with a notice of appeal.   |  |  |                          |
| The review is requested for the reason(s) stated on the attached sheet(s).<br>Note: No more than five (5) pages may be provided.   |  |  |                          |
| I am the   |  |  |                          |
| <input type="checkbox"/> applicant/inventor.   |  | Signature<br>Benjamin S. Withrow   |                          |
| <input type="checkbox"/> assignee of record of the entire interest.<br>Sec 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.<br>(Form PTO/SB/96)  |  | Typed or printed name<br>919-654-4520  |                          |
| <input checked="" type="checkbox"/> attorney or agent of record.<br>Registration number <u>40,876</u>  |  | Telephone number<br>October 14, 2005   |                          |
| <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.<br>Registration number if acting under 37 CFR 1.34 _____  |  | Date   |                          |
| NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.<br>Submit multiple forms if more than one signature is required, see below*.  |  |  |                          |
| <input type="checkbox"/> *Total of _____ forms are submitted.  |  |  |                          |

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.8. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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